

BEFORE THE STATE OF OREGON
OREGON HEALTH AUTHORITY
OFFICE OF ENVIRONMENTAL PUBLIC HEALTH

In the Matter of

Ludek Winkler/Hamlet Quick Stop,
PWS OR4194157

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Ludek Winkler
38012 Hwy 26
Seaside, OR 97138

You are a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(211), and as a water supplier, have specific responsibilities that are identified in OAR 333-061-0025.

You have at all times mentioned herein owned and operated, and continue to own and operate the Hamlet Quick Stop public water system, which is a transient non-community water system serving between 25 and 100 people and subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

Pursuant to its authority under ORS 448.150, the Oregon Health Authority, Public Health Division, Office of Environmental Public Health, Drinking Water Program (Program) has investigated the operation of the Hamlet Quick Stop water system.

The Program determined on October 18, 1999 that the construction of the source water catchment and transmission facilities were not adequate to prevent surface water from entering the Hamlet Quick Stop water system, resulting in the Hamlet Quick Stop water

system being classified as utilizing a surface water source. To date, the construction deficiencies related to the water source have not been corrected such that the source could be classified as groundwater. Additionally, you are not adequately operating and maintaining the surface water treatment equipment at the Hamlet Quick Stop water system such that it is providing the treatment required by OAR 333-061-0032. You have also failed to adequately notify water users that a public health hazard exists in the water system. You are therefore unable to assure the water users at Hamlet Quick Stop that the water is sufficiently free from contaminants such that individuals will not be exposed to disease or harmful physiological effects (ORS 448.115(8)). This represents a potential public health hazard.

This Notice of Violation and Administrative Order (Order) is being issued to you for the specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.290) and rules found during the Program's investigation as described below.

DESCRIPTION OF RULE VIOLATIONS

When installed and operating properly, the existing treatment system at Hamlet Quick Stop, consisting of both the filtration and UV, is credited with achieving the disinfection requirements for *Giardia lamblia* and *Cryptosporidium* as specified in OAR 333-061-0032(1)(a)(A) and (C) respectively. Furthermore, when operated properly, your treatment system was credited with 5.5-log removal and inactivation for *Cryptosporidium* meeting the source water monitoring avoidance criteria specified in OAR 333-061-0036(5)(e)(D)(i).

Program requirements were revised in 2009 because the current research demonstrates that ultraviolet light disinfection (UV) must administer a dose of at least 186 mJ/cm² to effectively inactivate some pathogenic viruses, and therefore UV disinfection must be capable of administering a dose of at least 186 mJ/cm² to be utilized for viral inactivation. The UV unit currently installed at Hamlet Quick Stop is also incapable of achieving the treatment requirement for viruses specified in OAR 333-061-0032(1)(a)(B) because it only produces a dose of 40 mJ/cm². You have failed to demonstrate, since August 9, 2011 when you were notified of the aforementioned regulatory changes, that the UV disinfection unit at Hamlet Quick Stop has been replaced with a unit capable of the viral inactivation required in OAR 333-061-0032(1)(a)(B).

Furthermore, inspections by Program or Oregon Department of Agriculture (ODA) staff on July 26, 2011, September 8, 2011, September 14, 2011, January 31, 2012, and February 1, 2012 found that the existing UV unit was not installed and operating

properly, and that the UV unit was displaying an error code indicating that it was not providing an acceptable dose of disinfecting radiation.

The cartridge filter unit utilized at the Hamlet Quick Stop water system was found to be missing a retainer nut on July 26, 2011. The retainer nut prevented unfiltered water from bypassing the filtration media and being delivered to water users. The Program has not verified replacement of the retainer nut to date due to the other water treatment deficiencies at Hamlet Quick Stop.

You were ordered by ODA, on September 14, 2011, to cease and desist from using water at Hamlet Quick Stop for the soda machine, for making ice or coffee, for washing dishes, and for other purposes, unless the water was first boiled. You were authorized to resume using water at Hamlet Quick Stop for the aforementioned purposes when the UV unit was operating properly and when water samples demonstrated that contamination was absent from the water system. You did not correct the underlying deficiencies responsible for the cease and desist notice, and the cease and desist requirement was not lifted by ODA. You were found to be in violation of the cease and desist notice on January 26, 2012 when ODA and Program staff inspected the Hamlet Quick Stop water system and determined that water was being utilized for the prohibited purposes. You were subsequently ordered by ODA on February 1, 2012 to cease and desist from all food service operations at Hamlet Quick Stop, and only resume food service operations upon approval by the Program.

Inadequately treated surface water has the significant potential to have serious adverse effects on human health as a result of short term exposure (OAR 333-061-0042(2)(a)). Inadequately treated water may contain disease causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches (OAR 333-061-0097(5)(c)).

- Violation No. 1: OAR 333-061-0025 requires water suppliers to take all reasonable precautions to assure that the water delivered to water users does not exceed maximum contaminant levels and that water system facilities are free of public health hazards. You have failed to maintain or adequately operate the treatment equipment installed at the Hamlet Quick Stop water system which presents a public health hazard and could result in an exceedance of one or more maximum contaminant levels as prescribed by OAR 333-061-0030. This constitutes a violation of OAR 333-061-0025.

- Violation No. 2: OAR 333-061-0025(5) requires water suppliers to notify all customers served by a water system when public health hazards are found to exist in the water system. Inspections at the Hamlet Quick Stop water system on July 26, 2011, September 8, 2011, September 14, 2011, January 26, 2012, January 31, 2012, and February 1, 2012 indicated that equipment responsible for the treatment of drinking water was not working effectively, and you were required to ensure that all water users at Hamlet Quick Stop were notified that the drinking water presented an immediate health hazard, and that water had to be boiled before it could be used for drinking, cooking, and other related purposes. The inspections on September 8, 2011, September 14, 2011, January 26, 2012, and January 31, 2012 found that public notices were not present at the entrance to the establishment or at any of the public sinks located therein. Furthermore, notices posted by the Program on January 26, 2012 had been removed prior to re-inspection on January 31, 2012. The failure to maintain the public notice posted by the Program constitutes a violation of OAR 333-061-0025(5).
- Violation No. 3: OAR 333-061-0032(1) requires all water systems supplied by a surface water source to install and properly operate water treatment that reliably achieves at least 99.9 percent removal and/or inactivation of *Giardia lamblia*, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal and/or inactivation of *Cryptosporidium*. The failure to adequately maintain or operate the treatment equipment at Hamlet Quick Stop indicates that the water system does not provide the minimum level of treatment required by OAR 333-061-0032(1), which constitutes a violation of the rule.
- Violation No. 4: OAR 333-061-0032(5) requires water systems utilizing surface water sources and providing filtration treatment to provide a minimum of 99.9 percent removal and/or inactivation of *Giardia lamblia* and 99.99 percent inactivation and/or removal of viruses through filtration and disinfection. Treatment equipment has been installed at the Hamlet Quick Stop water system, but this equipment is not being maintained or operated adequately. The water system therefore does not provide the minimum levels of treatment required by OAR 333-061-0032(5), which constitutes a violation of the rule.
- Violation No. 5: OAR 333-061-0042 requires water suppliers to provide public notice to persons served by public water systems for violations of the rules and other situations as specified in OAR Chapter 333, Division 061. You were required to provide public notice due to the treatment deficiencies described above, but inspections on September 8, 2011, September 14, 2011, and January 26, 2012 found that public notices were not present at the entrance to the establishment or at any of

the public sinks located therein. Furthermore, warning signs placed at appropriate locations in Hamlet Quick Stop on January 26, 2012 were found to have been removed during an inspection by ODA on January 31, 2012. The failure to provide or maintain public notice as required constitutes a violation of OAR 333-061-0042.

- Violation No. 6: OAR 333-061-0050(5)(k)(A) requires that when continuous disinfection treatment is provided through UV, it must achieve the dosage indicated in Table 37 (of OAR Chapter 333, Division 061) for the required pathogen inactivation. Table 37 of specifies that a UV dose of 186 mJ/cm^2 is required for viral inactivation. The UV unit currently installed at Hamlet Quick Stop only produces a dose of 40 mJ/cm^2 , which constitutes a violation of OAR 333-061-0050(5)(k)(A).
- Violation No. 7: OAR 333-061-0076(6)(a) requires water systems utilizing surface water sources to, within 45 days of receiving a sanitary survey report, respond to the Program or the agency that conducted the survey with a corrective action plan. A sanitary survey was conducted by ODA on July 26, 2011 at the Hamlet Quick Stop water system, and a letter was mailed to you on September 2, 2011 identifying several significant deficiencies found during the survey. As of the date of this order, you have not corrected all of the significant deficiencies identified in the September 2, 2011 letter, nor have you submitted an action plan to correct the deficiencies, which constitutes a violation of OAR 333-061-0076(6).

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

You are required to conduct the remedial actions described below which, if taken within the time specified in this Order, will effect compliance with the rule(s) violated (ORS 448.255(3)).

- Compliance Action No. 1: You must ensure that one of the actions specified below as Options 1.1 or 1.2 is completed no later than April 30, 2012.
 - Option 1.1: The surface water treatment system utilized at Hamlet Quick Stop must be capable of meeting all the applicable treatment requirements specified in OAR 333-061-0032, subject to inspection and verification by the Program; or
 - Option 1.2: You must provide an alternate water source, that meets all of the applicable construction, water quality, and other requirements specified in OAR 333-061-0005 through OAR 333-061-0097, for the Hamlet Quick Stop water system.

- Compliance Action No. 2: You must, within one month of completing Option 1.1 or 1.2 above and no later than April 30, 2012 take one of the actions specified below as Option 2.1 or 2.2.
 - Option 2.1: You must begin source water monitoring as specified in OAR 333-061-0036(5)(e)(A); or
 - Option 2.2: You must ensure, subject to inspection and verification by the Program, that the surface water treatment system utilized at Hamlet Quick Stop is capable of meeting the criteria for monitoring avoidance specified in OAR 333-061-0036(5)(e)(D)(i).
- Compliance Action No. 3: You must ensure that each of the significant deficiencies identified in the letter dated September 2, 2011 relating to the sanitary survey conducted on July 26, 2011 at the Hamlet Quick Stop water system is corrected, and the correction verified, no later than April 30, 2012.
- Compliance Action No. 4: You must publish public notice for failing to meet minimum surface water treatment requirements by posting the notice at the entrance to the establishment, at every water fountain and sink, and in other conspicuous locations so that every person served by the Hamlet Quick Stop water system receives the notice. The notice must include the following language in italics, exactly as written: *The water on these premises is not safe for human consumption. Do not use water from any faucet, tap, or spigot at Hamlet Quick Stop for drinking, food preparation, or any other similar purpose. Please refer to the "Notice and Directive to Cease and Desist" issued by the Oregon Department of Agriculture on February 1, 2012 for further information and restrictions.* The notice must also meet all of the applicable requirements of OAR 333-061-0042(4), and be re-published to include changes or additional information regarding the Hamlet Quick Stop water system every three months, until all corrections are made, and all system users receive drinking water that meets all applicable state and federal drinking water laws and rules (OAR 333-061-025 and OAR 333-061-0042(3)(b)(C)). A copy of the notice and certification of the method of distribution must be submitted to the Agency no later than 10 days after completing the public notification per OAR 333-061-0040(1)(j).
 - Submit copies of the public notice to: Brad Daniels, OHA - Drinking Water Program, PO Box 14450, Portland, OR 97293-0450.

GENERAL PROVISIONS AND CIVIL PENALTIES

This Order does not constitute a waiver, suspension or modification of the requirements of the Oregon Drinking Water Quality Act; ORS 448.115 to 448.290 and administrative rules OAR 333-061-0005 to 333-061-0290, which remain in full force and effect.

This Order does not relieve you of any responsibilities or liabilities established pursuant to any applicable federal, state, or local law or regulation.

Issuance of this Order is not an election by the Program to forgo any civil actions authorized under the Oregon Drinking Water Quality Act.

Failure to comply with any of the requirements in this Order by the specified due date may result in additional enforcement action, which could include assessment of civil penalties in the amount of \$50 per day per violation (OAR 333-061-0090). Civil penalties may be assessed beginning the day following the date of service of this Order and accruing through the date when the Program issues a Notice of Intent to Impose Civil Penalty.

Pursuant to ORS 448.990(2), violations of a rule of the Oregon Health Authority may be a crime in Oregon and punishable as a Class A misdemeanor.

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedure Act (Oregon Revised Statutes, Chapter 183). If you want a hearing you must file a written request for hearing with the Program within 10 days from the date this Order was mailed. **The request for hearing must be sent to: David E. Leland, Manager; OHA - Drinking Water Program; PO Box 14450; Portland, OR 97293.**

If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing.

If you do not make a timely request for a hearing, the Notice of Violation and Administrative Order will become final and effective 11 days after the date this Order was mailed. If the Order becomes final in this manner, you will have the right to appeal the order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 71 days from the day

this order was mailed. If you do not file a petition for judicial review within the 71-day time period, you will lose your right to appeal.

If you do not request a hearing and the Program subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

If you withdraw a request for hearing, or notify the Program or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Program may issue a final order by default. If the Order becomes final in this manner, you will have the right to appeal the Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was mailed. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

The Program has designated the Program's complete file on the Hamlet Quick Stop water system as the record in this case for purposes of proving a prima facie case upon default.

If you need to receive the information in this letter in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad Daniels at 971-673-0405.

Dated this 15th day of February, 2012.



Gail R. Shibley, JD, Administrator
Office of Environmental Public Health

cc: Barbara Cripe, Oregon Department of Agriculture
Evan Hofeld, OHA-DWP
Shannon O'Fallon, Oregon Department of Justice

DATE of Service: February 16, 2012


Brad K. Daniels

By certified mail and first class mail